

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUNE B. WARD,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner  
of Social Security Administration,

Defendant.

CASE NO. C04-5276JKA

ORDER REMANDING  
ADMINISTRATIVE DECISION

This matter has been referred and reassigned to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). Plaintiff brings the instant action pursuant to 205(g) of the Social Security Act ("the Act"), as amended, 42 U.S.C. § 405(g), to obtain judicial review of the defendant's final decision denying plaintiff's application for social security benefits. This matter has been fully briefed.

In his opening brief, plaintiff claims the following four errors: (i) the ALJ's Residual Functional Capacity assessment is not supported by substantial evidence; (ii) the ALJ improperly rejected the opinions of the treating physicians; (iii) the ALJ improperly rejected plaintiff's subjective pain complaints; and (iv) the Vocational Expert's opinion was invalid.

After reviewing the record, the court finds and orders the following:

1. Plaintiff applied for benefits on October 1, 2001, alleging she has been disabled since September 9, 1997. She has past work experience as a corrections officer, fish processor, kitchen helper, laundry worker, babysitter, firewatch, and social services case aide. The Administrative Law Judge denied her

1 application when he found plaintiff capable of performing her past work as a social services case aide, and  
2 alternatively, plaintiff was capable of performing other jobs existing in significant numbers in the national  
3 economy.

4 2. The ALJ is entitled to resolve conflicts in the medical evidence. Sprague v. Bowen, 812 F.2d  
5 1226, 1230 (9<sup>th</sup> Cir. 1987). He may not, however, substitute his own opinion for that of qualified medical  
6 experts. Walden v. Schweiker, 672 F.2d 835, 839 (11<sup>th</sup> Cir. 1982). If a treating doctor's opinion is  
7 contradicted by another doctor, the Commissioner may not reject this opinion without providing "specific  
8 and legitimate reasons" supported by substantial evidence in the record for doing so. Murray v. Heckler,  
9 722 F.2d 499, 502 (9<sup>th</sup> Cir. 1983). "The opinion of a nonexamining physician cannot by itself constitute  
10 substantial evidence that justifies the rejection of the opinion of either an examining physician or a treating  
11 physician." Lester v. Chater, 81 F.3d 821, 831 (9<sup>th</sup> Cir. 1996).

12 Here, on February 7, 2003, on referral from the Department of Social and Health Services, Ms.  
13 Ward was examined by Dr. Glade Birch, a psychologist. Dr. Birch concluded that Ms. Ward suffered from  
14 a pain disorder associated with both psychological factors of a general medical condition and a panic  
15 disorder without agoraphobia. Dr. Birch noted marked limitations in Ms. Ward's mood, anxiety, social  
16 withdrawal, physical complaints, and in her ability to respond appropriately to tolerate pressures of  
17 expectations of a normal work setting.

18 The ALJ in this matter rejected this medical opinion and did not find a severe impairment caused by  
19 any mental impairment. After reviewing the record, the court finds the ALJ improperly rejected this  
20 opinion. The ALJ noted that Dr. Birch was merely a one time examiner who had not reviewed the entire  
21 record. The ALJ also noted there was no longitudinal evidence to support the opinion of Dr. Birch.  
22 These reasons are not legitimate to reject the opinion of the only professionally qualified medical opinion  
23 given on the subject of Ms. Ward's mental capacity. Accordingly, the matter should be remanded to the  
24 administration to further consider the medical evidence regarding Ms. Ward's mental impairments or  
25 limitations.

26 3. Due to the error discussed above, remand is also necessary for the administration to reconsider  
27 plaintiff's credibility and plaintiff's Residual Functional Capacity, which are both affected by the ALJ's  
28 evaluation of the medical evidence. The court finds further consideration is necessary to allow the

1 administration the opportunity to cure these defects and properly consider each of the five-steps in the  
2 disability evaluation process.

3 4. The Administrative decision denying Ms. Ward's application for benefits is hereby REMANDED  
4 for further consideration.

5 DATED this 12th day of May, 2005.

6  
7 /s/ J. Kelley Arnold  
8 J. Kelley Arnold  
9 U.S. Magistrate Judge  
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